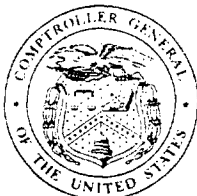


DECISION



13067 *Thursy - Cohen*
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-196442

DATE: March 11, 1980

MATTER OF: Lawrence Johnson & Associates, Inc.

DL602590

DIGEST:

Where agency requested offers for performance over 17-1/2 months, award of contract to firm for 27-month performance period without affording other offerors opportunity to submit proposals on that basis was improper.

22- Lawrence Johnson & Associates, Inc. (LJA) [protests the award of a cost-reimbursement level of effort type contract] by the Department of Health, Education, and Welfare (HEW) to Rand Corporation - CNE0047 (Rand) under request for proposals (RFP) No. 79-106. The contract is for the evaluation of the Office of - AGC Education's foreign language training and area studies program. LJA contends that the award was on a basis other than that on which proposals were requested, and disputes the results of the evaluation of its own proposal. We agree with LJA's first contention and, therefore, we sustain the protest. 00055

The RFP stated that the contract work was to be done in two phases over a performance period of 17-1/2 months. It provided that the estimated level of effort was approximately 6-1/2 person-years, but qualified that provision with the statement that "This estimate is provided for information only and is not to be considered restrictive for proposal purposes."

Five proposals were received. Although none were found acceptable after initial evaluation, it was determined that LJA's, Rand's, and two others could be made acceptable through negotiations. Discussions were then conducted with the four firms, and best and final offers were submitted and evaluated. Two, including LJA's, were found unacceptable, one was found "border-line," and Rand's was determined "substantially superior." The contract was awarded to Rand on September 29, 1979, for a proposed level of effort of eight person-years, a performance period of 27 months at a total estimated cost of \$483,423.

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LJA, which submitted alternate cost proposals of \$304,678 and \$319,049 for performance over the 17-1/2 month period specified in the RFP, protests the variance of the award from the RFP with respect to both the level of effort and the performance period. LJA also points out that the Government's estimated cost for the contract was only \$250,000. LJA contends that if it had been permitted to submit a proposal on the bases upon which the contract was awarded it could have offered a superior technical proposal at a lower cost than did Rand.

It is a fundamental principle of Federal procurement law that a solicitation must be drafted in such a manner that offers can be prepared and evaluated on a common basis. Computek Inc.; Ontel Corporation, 54 Comp. Gen. 1080 (1975), 75-1 CPD 384. To that end, Federal Procurement Regulations (FPR) § 1-3.805-1 (d) (1964 ed.) provides:

"When, during negotiations, * * * a decision is reached to relax, increase, or otherwise modify the scope of the work or statement of requirements, such change or modification shall be made in writing as an amendment to the request for proposals, and a copy shall be furnished to each prospective contractor. * * *"

See also 49 Comp. Gen. 402 (1969).

Although the award on an eight person-year basis complied with the RFP's qualification of the estimated 6-1/2 person-year level of effort, the 27-month performance period varied substantially from that prescribed in the solicitation. The failure to amend the RFP to afford all other offerors the opportunity to revise their proposals accordingly, was in our view prejudicial to Rand's competitors. For example, LJA and the other offerors may have been able to rectify any technical weaknesses in their proposals perceived by HEW had they known that an extended performance period

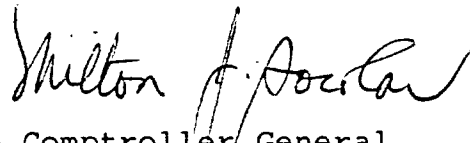
was acceptable to the agency. In this respect, our review of the Rand proposal and the agency's evaluation confirmed the technical advantage of the additional performance time, since the extended performance period was an essential element of the technical quality of Rand's proposed proposal. We also note that the agency considered the technical quality of Rand's proposal as adequate justification for that firm's relatively high cost proposal (almost twice the Government estimate and approximately 50 percent higher than the protester's).

Accordingly, in our view the award of the contract on a basis other than the one on which offers were solicited was improper and prejudicial to offerors that complied with the RFP requirements, and the protest on this issue is sustained. Datapoint Corporation, B-186979, May 18, 1977, 77-1 CPD 348.

As we have in situations involving similarly improper awards, we recommend that negotiations be reopened for another round of best and final offers based on the performance period requirement that will meet HEW's needs. If the highest evaluated best and final offer is submitted by a firm other than the contractor, we believe the contract with Rand should be terminated for the convenience of the Government and award made to that offeror. If, however, Rand submits the best proposal, the contract need only be modified if the performance period is other than 27 months, or the cost proposed is lower than the current contract cost. Informatics, Inc., 56 Comp. Gen. 402 (1977), 77-1 CPD 190; Honeywell Information Systems, Inc., 56 Comp. Gen. 167 (1976), 76-2 CPD 475; Burroughs Corporation, 56 Comp. Gen. 142 (1976), 76-2 CPD 472; Datapoint Corporation, supra. By letter of today we are advising the Secretary of HEW of our recommendation.

LJA's second basis for protest involves the firm's dispute with the technical judgment of the HEW evaluators which resulted in the determination that LJA's proposal was not acceptable. However, in view of our above recommendation, we see no reason to consider this matter further. Datapoint Corporation, supra. In any event, we point out that we have consistently stated that the determination of the relative merits of proposals is the responsibility of the contracting agency, not our Office, and thus will not be disturbed unless shown to be arbitrary or in violation of procurement statutes or regulations. WASSKA Technical Systems and Research Company, B-189573, August 10, 1979, 79-2 CPD 110.

Since this decision contains a recommendation for corrective action, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations, and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written statements by the agency to the Committees concerning the action taken with respect to our recommendation.



For the Comptroller General
of the United States